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November 12, 1999

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Guy M. Hicks
General Counsel

EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

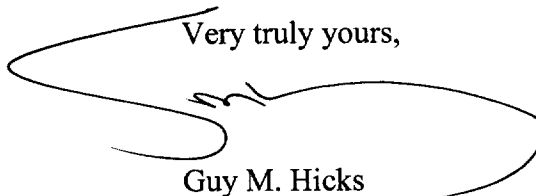
Re: *Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996*
Docket No. 99-00430

Dear Mr. Waddell:

In response to the Arbitrators' request, BellSouth and ITC^DeltaCom are filing fourteen copies of the enclosed issues matrix, which has been updated to reflect the fact that certain issues have been settled, both during and since the arbitration hearing in Tennessee.

It is possible that additional issues will be resolved by agreement and, if that occurs, the parties will notify you as soon as possible.

Very truly yours,



Guy M. Hicks

Nanette Edwards
w/ permission

Nanette Edwards

GMH:ch
Enclosure

cc: Hon. Gary Hotvedt, Hearing Officer
Don Baltimore

FILE

TENNESSEE ISSUES MATRIX
ITC^ΔDELTACom / BELLSouth ARBITRATION
TRA DOCKET NO. 99-00430
 Revised 11/12/99

ISSUE	ITC ^Δ DELTACom POSITION	BELLSouth POSITION
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I. Performance Measurements and Performance Guarantees

<p>Issue 1(a) Should BellSouth be required to comply with performance measures and guarantees for pre-ordering/ordering, resale, and unbundled network elements ("UNEs"), provisioning, maintenance, interim number portability and local number portability, collocation, coordinated conversions and the bona fide request processes as set forth fully in Attachment 10 of Exhibit A to this Petition?</p>	<p>Yes. BellSouth should be required to provide performance measures and three-tiered performance guarantees as proposed by witness Rozycki and incorporated into contract language in Attachment 10 to Exhibit A to the Petition.</p>	<p>BellSouth disagrees that the so called "performance measures" and performance "guarantees" in Attachment 10 to the Petition are appropriate. BellSouth has offered a comprehensive set of performance measurements (Service Quality Measurements or "SQMs") which ensure that BellSouth provides ITC^ΔDeltaCom and all other CLECs with nondiscriminatory access as required by the 1996 Act and applicable rules of the Federal Communications Commission ("FCC"). BellSouth also is willing to provide ITC^ΔDeltaCom any additional performance measurements that the Authority may order BellSouth to provide to other CLECs in this state.</p> <p>With respect to performance "guarantees", BellSouth does not believe that financial incentives, "guarantees", penalties or liquidated damages are appropriate matters for arbitration under the 1996 Act. The Authority has previously declined to "require a system of penalties and credits" in the context of an arbitration. (See Brief of the TRA, Case No. 39-97-0616, at 26, U.S. Dist. Ct., M.D. Tenn. (8-13-98); and MCI/BellSouth Arbitration before the TRA in Docket No. 96-01271). ITC^ΔDeltaCom's proposal is not required by the 1996 Act and represents a supplemental enforcement scheme that is inappropriate and unnecessary. ITC^ΔDeltaCom has adequate legal recourse in the event BellSouth breaches its interconnection agreement.</p>
<p>Issue 2 and 2(a)(iv) (b) Pursuant to this definition, should BellSouth be required to provide the following and if so, under what conditions and at what rates: (1) Operational Support Systems ("OSS"), (2) UNEs, (3) An unbundled loop using Integrated Digital Loop Carrier ("IDLC") technology</p>	<p>(b)(1) Yes. At no charge pursuant to the testimony of witness of witness Wood or, if so, at FCC complaint TELRIC rates spread equally over all end-user consumers pursuant to the testimony of witness Rozycki. (2) Yes. At FCC compliant TELRIC rates. (3) Yes. At FCC compliant TELRIC rates.</p>	<p>(b)(1) BellSouth provides CLECs with nondiscriminatory access to its OSS through electronic and manual interfaces. (See BellSouth's position on Issue 6(a) and 6(b) for discussion of rates).</p> <p>(b)(2) BellSouth provides CLECs with nondiscriminatory access to UNEs pursuant to 47 U.S.C. §251(c)(3) and 47 C.F.R. §51.311. (See BellSouth's position on Issue 6(b) for discussion of rates).</p> <p>(b)(3) When technically feasible, BellSouth will unbundle</p>

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<p>Issue 6(a) What charges, if any, should BellSouth be permitted to impose on ITC^vDeltaCom for BellSouth's OSS?</p>	<p>No charges for development. Any charges must be spread over all end user customers.</p>	<p>IDLC-delivered loops. Even when it is not technically feasible for BellSouth to unbundle an IDLC-delivered loop, BellSouth will provide ITC^vDeltaCom with loops that meet ITC^vDeltaCom's specific transmission requirements at the appropriate rates. (See BellSouth's position on Issue 6(b) for discussion of rates).</p> <p>BellSouth is entitled under the 1996 Act and the FCC's orders and rules to recover the reasonable charges it incurs in developing, providing, and maintaining the interfaces that make BellSouth's OSS accessible to competitors such as ITC^vDeltaCom. (See <i>AT&T Communications of the South Central States, Inc. v. BellSouth Telecommunications, Inc.</i> et al., slip Op. No. 97-79 (E. D. Ky., September 9, 1998)). ("Because the electronic interfaces will only benefit the CLECs, the ILECs, like BellSouth, should not have to subsidize them ... there is absolutely nothing discriminatory about this concept."). The Authority recently addressed the recovery of charges for OSS in its January 25, 1999, Order in Docket No. 97-01262 (Generic UNE Cost Proceeding) and on April 20, 1999, during the Directors' Conference, the Authority clarified that BellSouth shall recover the cost of OSS from all carriers using those systems. After the Authority issues a final order in Docket No. 97-01262, the rates for OSS will be established for Tennessee and should be incorporated into the parties' agreement retroactive to the date of the new agreement.</p>
<p>Issue 2(b)(ii) Until the Commission makes a decision regarding UNEs and UNE combinations, should BellSouth be required to continue providing those UNEs and combinations that it is currently providing to ITC^vDeltaCom under the interconnection agreement previously approved by this Commission?</p>	<p>II. Party, UNEs, and Interconnection</p> <p>Yes. The current agreement was approved under Section 252 by the Authority as compliant with the Act. It remains compliant and should continue until the TRA orders otherwise with regard to pricing UNE combinations. ITC^vDeltaCom's access should continue as previously approved. All interconnection agreements should be filed with the TRA under Section 252 of the Act.</p>	<p>BellSouth will continue to comply with its obligations under the 1996 Act and applicable FCC rules. BellSouth also will continue to provide any individual UNE currently offered until the FCC completes its Rule 51.319 proceedings consistent with the U.S. Supreme Court's decision in the <i>Iowa Utilities Board</i> case. The 1996 Act does not require BellSouth to combine elements for CLECs, and the FCC's rules (47 C.F.R. §§51.315(c) – (f))</p>

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<p>Issue 2(b)(iii)</p> <p>(a) Should BellSouth be required to provide to ITC^ΔDeltaCom the following combinations:</p> <p>(1) Loop/port combination</p> <p>(2) Loop transport UNE combinations</p> <p>(3) Loop UNE connected to access transport?</p> <p>(b) If so, at what rates?</p>	<p>(a) Yes. ITC^ΔDeltaCom currently serves customers through extended loops provided by BellSouth. The Act requires BellSouth to provide a loop/port combination.</p> <p>(b) Rates should be FCC compliant at TELRIC rates.</p> <p>Definitions of the 3 UNE rates to be furnished in testimony.</p>	<p>which purported to impose such an obligation on incumbent LECs such as BellSouth were vacated. Thus, this issue is not appropriate for arbitration. BellSouth is, however, willing to negotiate a voluntary commercial agreement with ITC^ΔDeltaCom to perform certain services or functions that are not subject to the requirements of the 1996 Act.</p> <p>(a) No. First, neither loops, ports, nor transport have been defined by the FCC as unbundled network elements that BellSouth must provide. Second, even if loops, ports, and transport are defined as UNEs, BellSouth is only obligated to provide combinations of those elements where they are currently combined in BellSouth's network. Additionally, BellSouth opposes ITC^ΔDeltaCom's attempt to expand the issue set forth in its Petition to include three different "flavors" of the extended loop. As stated, there is no requirement for BellSouth to combine UNEs let alone to combine UNEs with tariffed services as ITC^ΔDeltaCom is attempting to add as an issue here. (See also BellSouth's Position on Issue 2(b)(ii)).</p> <p>(b) Because BellSouth is not required to combine network elements for CLECs under the 1996 Act, the issue of applicable rates for such network combinations is not properly the subject of arbitration. To the extent the Authority concludes otherwise or determines to establish rates for network elements that are currently combined in BellSouth's network, the Authority should do so in the context of a generic proceeding rather than an arbitration involving one CLEC. Thus, this issue is not appropriate for arbitration.</p>
<p>Issue 2(c)(ii)</p> <p>What should be the installation interval for the following loop cutovers:</p> <p>(a) Single</p> <p>(b) Multiple</p>	<p>(a) Per the existing interconnection agreement, the standard time expected from disconnection of a live exchange service to the connection of the UNE to the ITC^ΔDeltaCom collocation arrangement is 15 minutes</p>	<p>(a) BellSouth has proposed a loop cutover installation interval time of fifteen (15) minutes for a single circuit conversion.</p> <p>(b) With respect to multiple loop cutovers or circuit conversions, BellSouth has proposed to use fifteen (15)</p>

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	(b) Per the existing interconnection agreement, the standard time expected from disconnection of a live exchange service to the connection of the UNE to the ITC\DeltaCom collocation arrangement is 15 minutes	minutes as the maximum interval time for one loop with multiple loop cutovers being accomplished in increments of time per loop or circuit conversion of less than fifteen (15) minutes. The loop crossover process is a multiple step process that requires a great deal of mutual cooperation and coordination between BellSouth and the CLEC. Thus, it is appropriate for different installation intervals to be established based upon the number of loops to be crossover to the CLEC.
Issue 2(c)(vi) Should each party be responsible for the repair charges for troubles caused or originated outside of its network? If so, how should each party reimburse the other for any additional costs incurred for isolating the trouble to the other's network?	Yes. Where the root cause was not DeltaCom's network, BellSouth should bear such costs. BellSouth should reimburse DeltaCom for any additional costs associated with isolating the trouble to BellSouth's facilities and/or equipment.	The party responsible for the repairs should bear the costs associated with those repairs. (See FCC First Report and Order at ¶1258, CC Docket 96-98 (8-8-96)). BellSouth has agreed to be responsible for such costs that are incurred due to BellSouth's network. However, BellSouth should not be responsible for costs due to ITC\DeltaCom's or a third party's network. BellSouth and ITC\DeltaCom should each be responsible for its own costs incurred in determining the cause of any trouble. Thus, this issue is not appropriate for arbitration.
Issue 2(c)(viii) Should BellSouth be responsible for maintenance to HDSL and ADSL compatible loops provided to ITC\DeltaCom? If so, at what rate?	Yes. BellSouth should maintain these loops at industry standard quality levels. Maintenance should be priced at FCC compliant TELRIC rates.	BellSouth will provide maintenance and repair for HDSL and ADSL compatible loops as the parties may agree. However, the loop modifications requested by ITC\DeltaCom (and other CLECs) are not a UNE offering. Thus, if BellSouth is providing a loop that has been modified from its original technical standards at the request of ITC\DeltaCom, such as HDSL or ADSL compatibility, then BellSouth cannot guarantee that the modified loop will meet the technical standards of a non-modified loop.

III. Reciprocal Compensation and Attachment 6
(Ordering and Provisioning)

Issue 3(1) Should BellSouth be required to	Yes. The caller's provider should bear the costs of	Issue 3(1): Under 47 U.S.C. § 251 (b)(5) and 47 C.F.R. §
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<p>pay reciprocal compensation to ITC^ΔDeltaCom for all calls that are properly routed over local trunks, including calls to Information Service Providers ("ISPs")?</p> <p>Issue 3(2) What should be the rate for reciprocal compensation per minute of use, and how should it be applied?</p>	<p>the call.</p> <p>The rate should be \$.009 per minute of use.</p>	<p>51.701, it is clear that reciprocal compensation is applicable only to local traffic, not to all traffic that may be routed over "local" trunks. "Local" trunks may actually carry access, or toll, traffic in addition to local traffic. ISP-bound traffic, even if routed over local interconnection trunks, is not subject to the 1996 Act's requirement of reciprocal compensation. The FCC's recent Declaratory Ruling in CC Docket Nos. 96-98 and 99-68, released on February 26, 1999, confirmed unequivocally that ISP-bound traffic is interstate in nature, not local. Thus, reciprocal compensation is clearly not applicable to ISP-bound traffic. In addition to being contrary to the law, treating ISP-bound traffic as local for reciprocal compensation purposes is contrary to sound public policy.</p> <p>Issue 3(2): The appropriate rates for reciprocal compensation are the elemental rates for end office switching, tandem switching and common transport that are used to transport and terminate local traffic. If a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function. (See BellSouth's position on Issue 6(b) for discussion of rates).</p> <p>Although BellSouth does not believe that compensation for ISP-bound traffic is subject to a Section 252 arbitration since ISP traffic is interstate, not local, traffic, BellSouth will propose an interim mechanism for ISP-bound traffic until the FCC issues a final order in its inter-carrier compensation docket.</p>

IV. Collocation

<p>Issue 4(a) Should BellSouth provide cageless collocation to ITC^ΔDeltaCom 30 days after a firm order is</p>	<p>Yes. Cageless collocation should be provisioned at intervals shorter than standard physical collocation and similar to virtual collocation.</p>	<p>No. BellSouth is not required by the 1996 Act or the FCC to provide cageless collocation within 30 days after a firm order has been placed. In fact, the FCC recently stated</p>
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placed?	ITC ^v DeltaCom must have collocation to effectively compete. BellSouth does not depend upon collocation. Unnecessary delays will give BellSouth a competitive advantage.	that it was not adopting specific provisioning intervals at this time. (See First Report and Order and Further Notice of Proposed Rulemaking, Docket No. CC 98-147, at ¶ 54). In addition, given the numerous factors and activities required to fulfill a collocation request, it is neither practical nor feasible to require BellSouth to complete the collocation request within 30 days. The absence of enclosure construction has little, if any, bearing on the overall provisioning interval for collocation since space preparation and network infrastructure work, among others, must still be completed regardless of the type of arrangement selected.

V. Old vs. New Agreement

<p>Issue 5 Should the parties continue operating under existing local interconnection arrangements?</p>	<p>As the issue is proposed by ITC^vDeltaCom the answers are:</p> <p>Yes. BellSouth should continue to charge for cross-connect reconfiguration/network redesign and NXX translations in the same way it does under the agreement previously approved by the Authority.</p> <p>(a) Local traffic and trucking option should be defined in the same way they are defined in the current agreement.</p> <p>(b) The same parameters should be applied as those in the existing interconnection agreement.</p>	<p>No. Negotiations take place to incorporate new language, terms, and obligations into an interconnection agreement in recognition of new technologies, changed circumstances, and changes in applicable law. The fact that ITC^vDeltaCom has filed for arbitration with BellSouth and listed some seventy-three (73) issues, many of which contain multiple questions, belies ITC^vDeltaCom's request to maintain its existing arrangements with BellSouth. Additionally, ITC^vDeltaCom proposed new local interconnection arrangements attached as Exhibit "A" to the Petition rather than relying upon the existing arrangements. BellSouth has negotiated with ITC^vDeltaCom in good faith and will continue to do so in an effort to reach a new agreement regarding local interconnection.</p>
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<p>Issue 6(b) What are the appropriate recurring and non-recurring rates and charges for:</p>	<p>(a) FCC compliant TELRIC rates. (b) FCC compliant TELRIC rates. (c) FCC compliant TELRIC rates. (d) FCC compliant TELRIC rates.</p>	<p>Until the Authority issues a final order in Docket No. 97-01262 (Generic UNE Cost Proceeding), applicable recurring and non-recurring rates should be those currently in effect in the parties' prior agreement. Once</p>
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VI. Rates and Charges

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<p>(a) two-wire ADSL/HDSL compatible loops, (b) four-wire ADSL/HDSL compatible loops, (c) two-wire SL1 loops, (d) two-wire SL2 loops, or (e) two-wire SL2 loop Order Coordination for Specified Conversion Time?</p>	<p>(e) FCC compliant TELRIC rates.</p>	<p>the Authority has entered a final order in Docket 97-01262, the existing rates would be trued-up retroactively to the date of the new agreement and consistent with such new agreement. The exception is for ITC^DeltaCom's request for a "four-wire ADSL compatible loop" since ADSL functionality is not applicable to four-wire loops.</p>
<p>Issue 6(c) Should BellSouth be permitted to charge ITC^DeltaCom a disconnection charge when BellSouth does not incur any costs associated with such disconnection?</p>	<p>No. No costs, therefore no charges.</p>	<p>BellSouth disagrees with the underlying assumption of this issue since BellSouth does incur costs in disconnecting service. Consistent with the Authority's January 25, 1999, Order in Docket No. 97-01262 (Generic UNE Cost Proceeding) at p. 41, and with the Authority's ruling at the Directors' Conference on April 20, 1999, in that docket, BellSouth will develop two separate disconnection rates after the Authority renders a final order in Docket No. 97-01262. When established, these rates should be trued-up retroactive to the date of the new agreement.</p>
<p>Issue 6(d) What should be the appropriate recurring and nonrecurring charges for cageless and shared collocation in light of the recent FCC Advanced Services Order No. FCC 99-48, issued March 31, 1999, in Docket No. CC 98-147?</p>	<p>Until BellSouth produces, and the Authority adopts, the results of a cost study for cageless collocation consistent with the FCC's TELRIC pricing rules, interim rates should be based on BellSouth's rates for virtual collocation with appropriate adjustments to remove costs associated with installation, maintenance and repair of ITC^DeltaCom's equipment.</p>	<p>Until the Authority issues a final order in Docket 97-01262, in which the Authority will establish collocation rates that will apply to cageless and shared collocation, the applicable recurring and nonrecurring rates should be those contained in the prior agreement. Once the Authority has entered a final order in Docket 97-01262, these rates would be trued-up retroactive to the date of the new agreement. No other rates beyond those being considered by the Authority in Docket No. 97-01262 are necessary in order for BellSouth to comply with the requirements of the FCC's recent Advanced Services Order in Docket No. CC 98-147. There are, however, some additional collocation elements that CLECs have requested since the Generic UNE Cost Proceeding (Docket No. 97-01262), such as fiber cross-connects and fiber point of termination ("POT") bays. BellSouth is filing cost studies and proposed rates for these elements.</p>

VII. Billing

VIII. General Terms and Conditions

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<p>Issue 7(b)(iv) Which party should be required to pay for the Percent Local Usage (PLU) and Percent Interstate Usage (PIU) audit, in the event such audit reveals that either party was found to have overstated the PLU or PIU by 20 percentage points or more?</p>	<p>The party seeking the audit should pay.</p>	<p>BellSouth agrees that the party requesting an audit should be responsible for the costs of the audit, except in the event the audit reveals that either party is found to have overstated the percent local usage ("PLU") or percent interstate usage ("PIU") by 20 percentage points or more, in which case that party should be required to reimburse the other party for the costs of the audit. This is a fair and reasonable provision for the protection of both parties. Contrary to ITC^vDeltaCom's position, such a contract provision is not a "penalty" provision since the costs are those actually incurred in performing the audit.</p>
<p>Issue 8(b) Should the losing party to an enforcement proceeding or proceeding for breach of the interconnection agreement be required to pay the costs of such litigation?</p>	<p>Yes. "Loser pays" will ensure frivolous lawsuits are not brought and deter BellSouth from gaming the regulatory process by forcing ITC^vDeltaCom to constantly bring enforcement actions at its own expense.</p>	<p>BellSouth believes that the inclusion of a "loser pays" provision would have a chilling effect on both parties to the extent that even meritorious claims may not be filed. The 1996 Act is only three and one-half years old and clearly represents an evolving area of rule and regulation that will require interpretation and guidance from state commissions for some time. In times of such uncertainty, there may be no clear "winner" or "loser," which further complicates the use of a "loser pays" clause. Thus, this issue is not appropriate for arbitration. The Act does not require any such attorneys fee provision.</p>
<p>Issue 8(e) Should language covering tax liability be included in the interconnection agreement, and if so, should that language simply state that each Party is responsible for its own tax liability?</p>	<p>Not necessary. If it must be included, it should simply require parties to implement the contract consistent with applicable tax laws. Each party should bear its own tax liability.</p>	<p>BellSouth has proposed language for the interconnection agreement based upon BellSouth's experiences with tax matters and liability issues in connection with the parties' obligations under interconnection agreements. A variety of taxes are imposed upon telecommunications carriers, both directly and indirectly (collected from end-users and other carriers). As would be expected, problems and disputes over the application and validity of these taxes will and do occur. The interconnection agreement should clearly define the respective rights and duties for each party in the handling of such tax issues so that they can be resolved fairly and quickly.</p>
<p>Issue 8(f) Should BellSouth be required to compensate ITC^vDeltaCom for breach of material terms of</p>	<p>Yes. The General Terms and Conditions should cover this issue.</p>	<p>The issue of compensation for breach of contract, penalties or liquidated damages are not appropriate matters for arbitration under the 1996 Act. The Authority</p>

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the contract?		has previously declined to "require a system of penalties and credits" in the context of an arbitration. (See Brief of the TRA, Case No. 39-97-0616, at 26, U.S. Dist. Ct., M.D. Tenn. (8-13-98); and MCI/BellSouth Arbitration before the TRA in Docket No. 96-01271). ITC ^Δ DeltaCom's proposal is not required by the 1996 Act and represents a supplemental enforcement scheme that is inappropriate and unnecessary. ITC ^Δ DeltaCom has adequate legal recourse in the event BellSouth breaches its interconnection agreement. (See BellSouth's position on Issue 1(a)).

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